UNITED
NATIONS

AT

Administrative Tribunal

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20 July 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 654

Case No. 692: HOURANI

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 20 August 1992, Ibrahim Fu'ad Hourani, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application requesting the Tribunal to order, inter alia:

"...

ii. Rescinding the decision of dismissal, considering the period of cessation as special leave with full pay, and refunding to the Applicant the amount of $710 discounted unjustifiably from the Applicant's provident benefits.

iii. Compensating the Applicant for the severe injury [caused by] ..., abuse of authority, exercised intentionally and persistently by the Respondent, estimated at $200.000.

...

v. Payment of all expenses and fees the Applicant sustained including the legal counsel's fees."

Whereas the Respondent filed his answer on 17 December 1992;

Whereas, on 26 April 1993, the Applicant filed written observations on the Respondent's answer as well as incidental pleas in which he requested, in part:

> "Costs sustained represent[ing] secretarial work including the translation of documents, photo copying, seeking criminal technical expertise, during the different stages of the appeal, ... [and also] ... mail and telexes fees, typing, etc ... estimated at $2,000.00. "

Whereas, on 27 June 1994, the President of the Tribunal ruled that no oral proceedings will be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA as a Trades Instructor, Plumbing, at the Damascus Vocational Training Centre (DVTC), on 1 September 1986, on a temporary indefinite appointment at the grade 8, step 1 level. After satisfactory completion of his probationary period, the Applicant's appointment was confirmed, with effect from 1 September 1987. He remained in the same post, at the same level, until the termination of his services on 18 June 1991.

On 13 April 1991, the Principal of the DVTC informed the Acting Field Administration Officer in the Syrian Arab Republic that a substantial theft of training supplies had taken place at the DVTC on 4 April 1991. He described how the theft had been committed, based on the statements of different witnesses who reported the incident to the Principal. In his conclusion, the Principal identified the Applicant as "the major [perpetrator] responsible" for the theft and recommended his suspension without pay. He also recommended that if the Applicant did not resign, his services with the Agency should be terminated with effect from 16 April 1991.

On 20 April 1991, the Director of UNRWA Affairs in the Syrian Arab Republic appointed a Board of Enquiry to investigate the matter. Also on 20 April 1991, the Applicant was advised by the Acting Field Administration Officer that he would be suspended from service pending an investigation.

In its report to the Field Director, dated 21 May 1991, the Board of Enquiry concluded that the Applicant had "not only caused substantial losses to the Centre's property over several years, but has shown himself as a man of considerable brutality".

On 18 June 1991, the Field Administration Officer informed the Applicant as follows:

> "...this is to advise you that based on the findings of the Board of Investigation, it has been decided to terminate your services with the Agency for misconduct, effective Close of Business on 19 April 1991, under the provisions of area staff rule 110.1.
>
> In the circumstances, you shall not be entitled to any termination indemnity. Anyway, you shall be paid your credits and exceptionally the Agency credits standing to your name in the Provident Fund Account."

In an undated letter sent in August 1991, the Applicant requested the Field Director to review this administrative decision.

On 6 August 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 12 May 1992. Its findings and recommendation read, in part, as follows:

"IV. ...

1. The report of the Board of Enquiry which propelled findings made upon investigations, queries and hearing witnesses does not lack any credibility, as is alleged by the Appellant due to the following reasons:

(a) the constituency of the Board of Enquiry comprised Agency staff members that the Appellant and the Administration raised no question about their impartiality or credibility and thus, ..., could not have been motivated by prejudice against the Appellant;

...

2. The Board contends that the Appellant's evidence to establish his obtainment of a permission from the late Principal, DVTC, to take tools and materials to outside the DVTC for the purpose of training an engineer does not furnish

sufficient grounds for the Appellant's acquittal as balanced against testimonies not in the Appellant's favour and which referred to habitual acts of misappropriation over years carried out by the Appellant.

3. The Appellant's allegation that misappropriations were taking place in other parts of the Centre, does not, ..., provide any materiality, relevance or coherence to the Appellant's defence against the findings of the Board of Enquiry convicting him.

4. After a thorough consideration, the Board finds it difficult to see how the late Principal, DVTC, could have been personally motivated against the Appellant. This is based on the failure of the Appellant to provide material evidence to that effect and which could, if [it] existed, impel concurrence with the Appellant's allegation.

V. Recommendation

In view of the foregoing, the Board unanimously makes its recommendation:

1. The Administration's decision of 18 June 1991, in respect of the Appellant, be upheld, and

2. That the case be dismissed."

On 18 June 1992, the Commissioner General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I have examined the report of the Joint Appeals Board and accept the conclusions arrived at by the Board. I must, therefore, inform you that the Administration's decision to terminate your services will stand."

On 20 August 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's services is unfounded and was based on false allegations, fabricated by the Principal of the Centre.

2. The JAB recommendations were biased and based on an unsubstantiated erroneous preconception of the facts.

3. The Applicant was not allowed to cross examine witnesses.

4. The Applicant was entitled to be represented before the JAB by outside counsel.

Whereas the Respondent's principal contentions are:

1. It is within the discretionary authority of the Commissioner General to consider that the purpose of keeping the proceedings of the JAB straightforward and efficient is better served by allowing representation by serving staff members only.

2. In view of the exceptional circumstances of this case, where the security of witnesses is at risk, the Applicant should not be given access to certain documents that he requested.

3. The Respondent validly exercised his discretion to terminate the Applicant's appointment.

4. The gravity of the offence committed by the Applicant, i.e. wilfully plotting to [illegible] succeeding in stealing from the Agency, justified the disciplinary measure that was applied [illegible] his case.

5. The Applicant has failed to demonstrate that the impugned decision was flawed by a mistake of fact, an error of law, a deprivation of due process or was vitiated by extraneous or prejudicial factors.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. The Tribunal notes that when the theft of stores in the DVTC was reported on 4 April 1991, the Respondent spared no time or effort to conduct proper investigations. As a result of these enquiries, it was established, beyond doubt, that large-scale misappropriation of stocks and consumer goods, spread over a long time and apparently involving a number of people, had taken place at the DVTC.

II. The Respondent admits, by implication at least, that one factor leading to the wide and systematic stealing of supplies of all kinds - entailing a substantial loss to the Agency - could have been the lack of timely and effective supervision. Although the Applicant had been in service for several years, the only audit report which the Tribunal has seen relates to the year 1991. It reveals that "over the preceeding years, failure within the DVTC to ensure compliance with the Agency's operational procedures caused a general breakdown in the internal control of supplies movement, stock-taking and surveyed Agency property". In this atmosphere of slackness of supervision and control, much pilfering took place and the Applicant was considered a major operator with at least one accomplice, Mr. Su'oud, whose case has been dealt with by the Tribunal separately, in its Judgement No. 652, signed today.

III. The Applicant repeatedly challenges all aspects of the handling of the charges brought against him by the Respondent. He asks the Tribunal for an oral hearing, the production and examination of documents already examined earlier by the Board of Enquiry, the JAB and even in the earlier enquiry held by the Principal, DVTC.

IV. In the long complaint of 38 pages (in Arabic and later in English) finally sent by the Applicant on 6 August 1991, to the JAB, he attempts to present a picture that he is innocent and honest and has been made a scapegoat for the losses suffered by the DVTC as a result of the wrong-doings of other people, particularly of the Principal. The Principal died early in 1992.

V. In his appeal to the JAB, the Applicant elaborated on his right to have a counsel of his choice and asked for a number of documents which, he asserted, had been wrongly denied to him. To the Tribunal, he has repeated many of his pleas before the JAB, including his request for numerous documents which, he claims, formed the basis of conclusions against him, arrived at as a result

of various investigations carried out by the Respondent. The Applicant also asks for the witnesses to be identified and cross-examined.

VI. The Tribunal has considered these requests. It has also taken into account the Respondent's objection that various witnesses and others would be exposed to risk and threat if the Applicant had access to their identities and statements.

The Tribunal has consistently maintained the right of Applicants to see all evidence against them and their right to cross-examine witnesses. The Tribunal notes that in certain exceptional circumstances, and so long as it is established to the Tribunal's satisfaction that the Applicant was afforded fair and legitimate opportunities to defend his or her position, extra precautionary measures to protect witnesses may be justified.

The Tribunal is of the view, that in this case - when evidence shows that witnesses are likely to be suborned or subjected to threats and physical harm - the Respondent would be justified in withholding certain information from the Applicant, including the identity of some witnesses and others involved in assisting the investigations. The Tribunal, therefore, considers that the material before it is adequate for its purpose and there has not been, nor will there be, any miscarriage of justice in this case. This decision of the Tribunal is in conformity with its views expressed in its Judgement No. 558, Faruq (1992).

VII. The Tribunal does not consider itself called upon to rule on who could and who could not represent the Applicant as his counsel before the JAB, inasmuch as in this and other matters the Respondent was following the area Staff Rules in force in 1991. Besides, the Tribunal does not find that the appointment of the counsel who eventually represented the Applicant before the JAB had the slightest adverse effect on his case.

VIII. The Tribunal, in considering the evidence presented to it, finds that the two main bodies - the Board of Enquiry established by the Agency, and subsequently the JAB, performed their work conscientiously and there is no ground to question their conclusions. The Tribunal notes that there were some difficulties and some minor irregularities, but none of them stood in the way of establishing that the Applicant was responsible, directly or indirectly, for the theft and misappropriation of stocks belonging to the Agency. If any credence is to be given to the protestations of the Applicant, there should have been some explanation as to why such a large number of people would have testified against him. Simply to assert blandly and repeatedly, but without any evidence, that he disagrees with the Respondent entirely and that all was concocted by the now dead Principal of the DVTC, carries little conviction. The Tribunal notes that many of the allegations against the Principal and the Respondent were made after the Board of Enquiry had come to its conclusions and in some instances, even after the JAB had made its recommendation on 12 May 1992.

IX. The Tribunal further notes that no objection was raised to the composition of the Board of Enquiry or of the JAB before they began their work, and finds that late complaints on these matters are not tenable. The Tribunal accepts that many other persons might have been involved, as suggested by the Applicant, in the large-scale abuse and misappropriation of stocks from the DVTC, but the issue before the Tribunal is not the guilt or innocence of other persons, but essentially the determination of whether the conclusions reached against the Applicant by the JAB are justified or whether he has been, as he claims, a victim of other people's intrigue, malice and conspiracy. Taking account of all the evidence before it, the Tribunal finds that the Applicant has not established his contentions. It therefore upholds the findings of the Board of Enquiry and the conclusions of the JAB.

X. The only question left for the Tribunal to consider is whether the penalty imposed on the Applicant - termination - was justified. The Tribunal notes that the disciplinary measure imposed was within the discretion of the Respondent and, in the circumstances of this case, cannot be considered excessive. Finally, the Tribunal states once again that in disciplinary cases, especially where large-scale corruption is rampant, it would not object to the liberal exercise of discretion by the Respondent, provided it is not tainted with bias, prejudice or similar factors. The Tribunal holds that, in this case, the Respondent exercised his discretion properly and that such exercise was not influenced by bias, prejudice, and other extraneous factors.

XI. In view of the above, the Tribunal rejects the application as well as the Applicant's request for costs.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary